



## CITY OF FRISCO

GEORGE A. PUREFOY MUNICIPAL CENTER  
6101 FRISCO SQUARE BLVD - 3RD FLOOR  
FRISCO, TEXAS 75034  
TEL 972.292.5300 - FAX 972.292.5388  
WWW.FRISCOTEXAS.GOV

**To:** Honorable Mayor and City Council Members

**From:** Greg Carr, Code Enforcement & Animal Control Administrator

**XC:** George Purefoy, City Manager  
John Lettelleir, AICP, Director of Planning & Development  
Todd Renshaw, Chief of Police

**Date:** November 21, 2008

**Subject:** Consider and act upon the Texas City Attorney's Association (TCCA) study of secondary effects regarding Sexually Oriented Businesses and give staff direction on preparing an ordinance for amending the City's ordinances regulating Sexually Oriented Businesses. (Planning & Development Services)

---

### **Action Requested:**

Discuss findings from the Texas City Attorneys Association (TCCA) study of secondary effects of sexually oriented businesses, consider staff's proposed amendments, and give staff direction on amending the City's Sexual Oriented Business ordinance.

### **Background Information:**

The Texas City Attorneys Association (TCAA) Board of Directors commissioned a study by nationally-known experts in the field, with the goal of determining the extent to which retail-only sexually oriented businesses with no on-premises entertainment cause harmful effects on surrounding property values and crime rates. The City of Frisco joined with other cities to help fund this study.

The study is divided into two parts:

1. A survey of Texas real estate appraisers; and
2. A study of crime-related secondary effects in the City of San Antonio, including a review of other crime-related studies.

The results of the study indicate that property values and ambient crime rates **are negatively** affected by the presence of retail-only adult businesses.

## **The Study**

The TCAA commissioned study is divided into two parts:

- Part 1: “A Survey of Texas Appraisers – Secondary Effects of Sexually-Oriented Businesses on Market Values”, authored by Connie B. Cooper, FAICP and Eric Damian Kelly, Ph.D., FAICP; and
- Part II: “Crime-Related Secondary Effects – Secondary Effects of “Off-site” Sexually-Oriented Businesses”, authored by Richard McCleary, Ph.D.

**Part I: “The Survey of Texas Appraisers”**, includes the results of an internet-assisted survey sent to Texas MAI and SRA appraisers who are Members of the Appraisal Institute. Of those sent surveys, 195 responded for a response rate of 25.5 percent and an overall margin of error of 6.06 percent. In the opinion of appraisers, the survey clearly documented that retail-only sexually oriented businesses had an impact on the market value of single family homes and community shopping centers.

The survey also measured the opinions of appraisers as to the separation distances required before such retail-only businesses had no measurable impact on the market value of single family homes and community shopping centers. In each case, a large percentage of surveyed appraisers responded that a separation distance of more than a half mile (72 percent for single family homes and 45 percent for a community shopping centers) was required before there was no measurable impact on market values created by retail-only sexually-oriented businesses. Appraisers also responded that a concentration (two or more) of such sexually-oriented businesses also increased their negative impact as do late hours, and obtrusive signage and lighting.

The second section of Part I includes an examination of the

- Sexually-oriented businesses and the courts;
- Basic constitutional principles regulating First Amendment activity;
- The law of “secondary effects”;
- Regulating signage and lighting;
- Review of Texas Statutes; and
- A concluding discussion of the treatment of other uses with negative secondary effects.

**Part II: “Crime-Related Secondary Effects”**, includes a documented:

- Description of the criminological theory of secondary effects;
- Its application of this theory to the retail-only sexually oriented business model;
- A synthesis of the evidence bearing on this theory; and
- A case study subjecting crime data from a Texas jurisdiction to null hypothesis tests.

This section of the study supports the finding that it is a *scientific fact* *that* sexually-oriented businesses pose large, statistically significant ambient public safety hazards in terms of:

- Prostitution
- Drugs
- Assault
- Robbery, and
- Vandalism

Suggested strategies for mitigating the crime-related secondary effects are:

- Increasing police presence;
- Distancing sexually oriented businesses from sensitive land uses such as other SOB's, churches, schools, residential areas;
- Limiting the hours of operation; and
- requiring such businesses to "harden" themselves against criminal activity by installing outdoor lighting, parking lot surveillance cameras, and anti-"cruising" structures.

This study dispelled the myth that a large proportion of the patrons of retail-only businesses are female (it found only 20 – 25 percent were female), and that unlike male patrons, women tended to arrive in the company of others and visited the businesses at much early hours of the day. It also provides documentation that visits to retail-only sexually oriented businesses are not run-in and run-out type visits. The report includes a review of three case studies of the criminological impact of "off-site" sexually-oriented businesses (Sioux City Iowa; Montrose, Illinois; and Los Angeles, CA).

Part II concluded with a discussion of the biases and weaknesses of the 2006 secondary effects study conducted by Roger Enriquez, Jeffery Cancino and Sean Varano which was based on San Antonio data. McCleary found that compared to randomly selected control sites, off-site SOB sites pose large, statistically significant ambient crime victimization risks. The fact that ambient risk diminishes exponentially with distance from the site of a sexually-oriented business demonstrates the sites are neighborhood point-sources of crime victimization risk.

### **Proposed Changes to Current Ordinance**

The following are the major changes to the SOB ordinance that reflect the findings of the TCAA study and other changes recommended by city staff and the City Attorney. There are other small grammatical changes and spelling corrections that are not listed.

## **Purpose and Findings (Section I)**

It adds reference to the Texas City Attorneys Association's 2008 commissioned study on the secondary effects of sexual oriented businesses.

## **Definition Changes in the Proposed Ordinance (Section II)**

It adds, deletes or amends definitions based upon language added or changed in other sections.

## **License and Designated Operator (Section IV):**

Requires that SOB's have a designated operator who is responsible for ensuring compliance with this ordinance and that a designated operator be present during all business hours. It also specifies that a valid state identification card is required for identification purposes.

## **Issuance of License (Section V)**

It adds the term minor to language. It also addresses any temporary licenses being deemed null and void if a permanent license is denied.

## **Identification records (Section VII)**

It adds requirements for what information on records is required and what records are to be kept.

## **Suspension (Section X)**

It adds an "operator" as an individual that can cause an action for suspension. It also prohibits any gambling.

## **Revocation (Section XI)**

It adds the term operator to the language.

## **Notice of Denial/Renewal/Suspension/Revocation of license (Section XII)**

It defines the suspension and revocation process and outlines notification requirements.

## **Appeals (Section XIII)**

It adds notification clarification.

## **Additional regulations concerning adult motion picture theatres (Section XX)**

Language regarding this topic was moved from other sections and consolidated under this section for better clarification.

## **Additional regulations for adult cabarets (Section XXI)**

Language regarding this topic was moved from other sections and consolidated under this section for better clarification.

## **Prohibition against minors in a sexually oriented business (Section XXIV)**

It adds language to prohibit the employment of a minor in a SOB as well as adding language to charge a minor who is working in a SOB.

## **Sexually Oriented Businesses not singled out**

The City regulates land uses in many different ways. Sexually Oriented Businesses are not being singled out in any way. The secondary effects study reveals that such businesses have negative effects on neighboring property values and those negative effects lessen with distance separation. The following are a list of ordinances and land use restrictions placed on other uses.

### **Uses with distance requirements**

- Accessory Gas Pumps – Required to be 250 feet from a residential property line.
- Rehabilitation Care Facility – Required to be 1500 feet from another rehabilitation care facility.
- Convenience Store with Gas Pumps – Required to be within 200 feet of a major intersection.
- Residence Hotel – Required to be 1500 feet from other hotels, motels, and residence hotels.
- Restaurant with alcohol sales – Required to be 1000 feet from a private school if requested by the school, 300 feet from a church, hospital, public or private school.
- Beer and Wine Package Sale – Required to be 300 feet from a church, hospital, and schools. Not restricted in residential areas.
- Beer and Wine Package Sale where alcohol sales are greater than 75% or sales – Required to be 1500 feet from other similar establishments, 800 feet from residential areas, 1500 feet from city park, church or school.

## **Uses restricted to Industrial zoning areas with special use permit**

- Concrete/asphalt batching plant.
- Electric Power Generating Plant.
- Landfill.
- Massage Therapy, unlicensed.
- Mineral Extraction.
- Miscellaneous Hazardous Industrial Uses.
- Salvage Yard.
- Theatre, Drive in.
- Trailer/mobile home display and sales.

The TCAA study found that certain uses (other than sexually oriented businesses) also have negative impact on the market value of nearby single family homes. Such uses included landfills, bars, pawn shops, high voltage power lines, package liquor stores, and convenience stores. The City's treatment of these uses is consistent with this finding, and is also further evidence that the City is not singling out sexually oriented businesses.

The City allows landfills, bars, and pawn shops only in Industrial Districts or by specific use permit, where certain conditions can be placed upon the uses to mitigate their negative secondary effects. These uses either have to be located away from residential development, or the nearby residents are given an opportunity to provide input through the public hearing process for the specific use permit. Furthermore, the state regulates landfills, high voltage power lines, pawn shops, and bars, many times preempting further regulation by a municipality. With regards to package liquor stores, it is important to note that Frisco is a "dry" city, since the citizens have not elected to exercise their local option under the Texas Constitution.

Although the City has fewer restrictions on convenience stores, the TCAA study found that only fifty percent of the appraisers believed that a convenience store would negatively impact surrounding residential property values. Almost 11 percent of the appraisers felt that convenience stores actually had a positive impact upon residential development, and approximately 33 percent felt that it had no impact upon value.

As a use, convenience stores are seen by city staff as having a limited market value impact on nearby residences for the following reasons:

- Through the sale of household goods and food, convenience provided a needed service to adjacent residential development.
- The majority of sales are associated with fuel.
- While convenience stores do sell beer and wine, the sale of these beverages to minors is prohibited by the State and enforced through State requirements for identification.
- There are convenience stores that may sell adult type magazines or publications but these are required to have opaque covers as well as being located out of the reach of minors.

Although the City does not regulate convenience stores as strictly as sexually oriented businesses, the two uses present different degrees of impact on surrounding residential development. Currently, the City requires convenience stores to be setback at least 500 feet from any residential development. Furthermore, convenience stores must be located only at the intersection of major thoroughfares, and fuel pumps must be located at least 200 feet from the intersection. Just as the City has adopted regulations to mitigate those negative secondary effects particular to sexually oriented businesses, the City has done the same for convenience stores.

**Board Review/Citizen Input:** Not applicable.

**The City Council may:**

1. Accept the TCCA study of secondary effects and direct staff to prepare an ordinance.
2. Table the TCCA study for further review.
3. Take no action on the study and not direct staff to amend the ordinance.

**Financial Considerations:**

The following fees are recommended to cover staff time in reviewing the application, renewing the application and performing background checks.

- SOB License of \$700.00
- Renewal of SOB License \$350.00
- Employee License \$75.00/person
- Renewal of Employee License \$75.00/person

**Legal Review:** The City Attorney's office prepared the proposed ordinance, and will incorporate any changes requested by City Council.

**Supporting Documents:**

- Current ordinance No. 04-04-30
- Proposed ordinance.
- Secondary Effects Report

**Staff Recommendation:**

City Council acceptance of the Summary of Secondary Effects Report and direction to staff to prepare an Ordinance for the Council's consideration.